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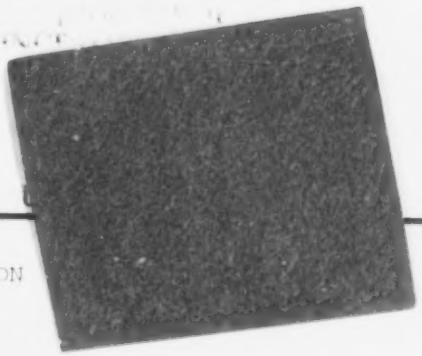

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

FINAL REPORT AND RECOMMENDATIONS OF THE PANEL OF COMMISSIONERS CONCERNING THE EGYPTIAN WORKERS' CLAIMS

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Note

The Report and Recommendations of the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase) is contained in document S/AC.26/1995/R.20 Rev.1. of 12 October 1995.

GE.97-64662

Introduction

1. This report contains the recommendations to the Governing Council of the United Nations Compensation Commission ("the UNCC" or "the Commission") by the Panel of Commissioners appointed to review the Egyptian Workers' Claims ("the Panel"), pursuant to article 37(e) of the Provisional Rules for Claims Procedure ("the Rules"). Included in this report are the final conclusions of the Panel following its review in the merits phase of the Egyptian Workers' Claims. The Panel's report on the jurisdictional phase has previously been submitted to the Governing Council. 1/

2. The Egyptian Workers' Claims comprise approximately 1.24 million claims for about US$491 million, being the dollar value of funds deposited by Egyptian workers into banks in the Republic of Iraq ("Iraq") for transfer to beneficiaries in the Arab Republic of Egypt ("Egypt"), in accordance with agreements between Egypt and Iraq. The transfer of these funds ceased following the invasion of Kuwait by Iraq on 2 August 1990.

I. PROCEDURAL HISTORY

3. Due to the unique volume and characteristics of the claims, the secretariat of the Commission (the "secretariat") and the Government of Egypt entered into a "Memorandum of Understanding Concerning the Filing with the United Nations Compensation Commission of Claims Regarding the Remittances of Egyptian Workers in Iraq" ("the MOU"), on 17 June 1993.

4. The MOU provided for a two-stage procedure for processing the Egyptian Workers' Claims: a jurisdictional phase during which the Panel would determine to what extent the Commission has jurisdiction over the claims; and a merits phase during which the Panel would determine the entitlements of those claims found to be within the jurisdiction of the Commission.

5. On 27 December 1993, Egypt filed with the Commission a consolidated category "C" claim for US$491,098,538 plus interest at a rate of five per cent per annum, accruing from 2 August 1990. The claim was put forward for the non-transferred remittances of Egyptian workers in Iraq.

6. After the appointment of this Panel, and following the reporting of the factual and legal issues raised by the Egyptian Workers' Claims in the Eighth Report of the Executive Secretary to the Governing Council Pursuant

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1/ Report and Recommendations of the Panel of Commissioners Concerning the Egyptian Workers' Claims (Jurisdictional Phase) [S/AC.26/1995/R.20/Rev.1], hereinafter referred to as the report on the jurisdictional phase.

to Article 16 of the Rules, the Panel commenced its work on the jurisdictional phase on 10 January 1995.

7. In the course of the Panel's work on the jurisdictional phase of the review of the Egyptian Workers' Claims, both Egypt and Iraq filed briefs and documents containing their views, and responded in writing to specific questions raised by the Panel. The submissions filed by Egypt and Iraq were, as directed by the Panel, transmitted by the secretariat to both Governments. The Panel thereafter conducted an Oral Hearing. 2/

8. During its session from 4 to 7 July 1995, the Panel finalized its report on the jurisdictional phase in which the Panel determined that only those claims relating to deposits made on or after 2 July 1990 were within the jurisdiction of the Commission.

9. On 11 October 1995, the Governing Council, at its eighteenth session, received the Panel's report on the jurisdictional phase and, pending receipt of the Panel's final report, invited the Executive Secretary to provide copies of the report on the jurisdictional phase to Egypt and Iraq. That report was accordingly transmitted to both Governments on 12 October 1995.

10. Pursuant to the Panel's report on the jurisdictional phase, Egypt was required to file, within four months of receipt of the report, documentary evidence with respect to those claims determined by the Panel to be within the Commission's jurisdiction. The report also invited Iraq to submit its views and comments on such evidence and information filed by Egypt.

11. Egypt, in its letter of 27 November 1995, asked the Commissioners to request Iraq to provide an explanation of the basis of its response to the Panel's questions, in which Iraq stated that the total dollar value of payment orders issued after 2 August 1990 was US$118,102,263.67. The secretariat forwarded a copy of this request to Iraq but received no response.

12. On 8 December 1995, Egypt sent a request to the Executive Secretary, pursuant to article 41, paragraph 1, of the Rules, for the correction of computational errors that it stated were contained in the Panel's report on the jurisdictional phase.

13. On 27 December 1995, Egypt, pursuant to the Panel's report on the jurisdictional phase, filed copies of payment orders received by the Bank

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2/ The procedural history of the jurisdictional phase of the proceedings is set out in detail in paragraphs 5 to 37 of the Panel's report on the jurisdictional phase.

of Alexandria in Egypt from the Rafidain and Rashid Banks in Iraq in respect of deposits made after 2 July 1990.

14. Further, on 5 February 1996, Egypt filed copies of payment orders received by the Arab African International Bank (AAIB), and the Cairo branch of the Rafidain Bank, from the Rafidain and Rashid Banks in Iraq in respect of deposits made after 2 July 1990. In a letter dated 31 January 1996 accompanying its submissions, Egypt repeated its request that Iraq provide an explanation as to the basis of Iraq's calculation of the value of payment orders issued after 2 August 1990. The secretariat also transmitted a copy of this letter to Iraq but received no response on the request.

15. The submissions by Egypt did not include, as required in paragraph 232 of the Panel's report on the jurisdictional phase, a list containing "the names of all of the claimants and the amount claimed for each claimant as well as the name of each beneficiary entitled to the amount where the claimant is not the beneficiary" and "with respect to each amount claimed, the date on which the corresponding dinar deposit was made". The secretariat requested such a list from Egypt on 14 February 1996.

16. While awaiting receipt of the requested list from Egypt, the secretariat, on 12 March 1996, transmitted a set of the documents filed by Egypt on 27 December 1995 and 5 February 1996 to Iraq.

17. Egypt filed the requested list of claimants in computer diskette format on 12 June 1996. Copies of the 42 diskettes received were transmitted to Iraq by the secretariat on 21 June 1996.

18. On 28 August 1996, Iraq sent its initial observations on the information contained in Egypt's computer diskettes to the secretariat. Iraq complained of errors in the lists and difficulties in accessing information on some of the diskettes. Iraq also asserted that the data provided was incomplete. The secretariat, in its response of 4 September 1996, requested Iraq to specify those diskettes with which it was encountering difficulties. However, following the receipt of the secretariat's inquiry, Iraq has not pursued the issue any further.

19. On 15 and 27 November 1996, Iraq filed, in Arabic and in English, respectively, its views and comments on the Panel's report on the jurisdictional phase and on the submissions of Egypt. Annexed to Iraq's submission were eight sets of lists containing the names of claimants who Iraq argued, for various reasons, should not be compensated by the Commission.

20. The Panel held one consultative and two working sessions with the Commission's secretariat at the secretariat's headquarters in Geneva to consider the merits of the workers' claims. Members of the secretariat

attended the meetings and sessions and provided support to the Panel. Between its formal sessions in Geneva, the Panel continued its work and maintained continuous contact among its members and with the secretariat.

II. ISSUES IN THE MERITS PHASE

A. Value of the Claims in the Merits Phase

21. As determined by the Panel in its report on the jurisdictional phase, the total value of the claims in the merits phase consists of the value of those claims that relate to funds deposited by the Egyptian workers into the Iraqi banks from 2 July 1990 for transfer in US dollars to Egypt.

22. For the period from 2 July 1990, Egypt was able to provide copies of payment orders that were issued for deposits in the sum of US$84,751,554, while Iraq, in its review of the submissions filed by Egypt following the Panel's report on the jurisdictional phase, asserted that the value of deposits during the same period was US$84,276,943.

1. Egypt's Views

23. Egypt contends that a substantially higher dollar value is indicated by the payment orders issued by the Iraqi banks than is indicated by the payment orders actually received by the Egyptian banks. According to Egypt, there were payment orders which, although issued and dispatched to Egypt, were not received by the banks in Egypt.

24. Egypt's assertion is based mainly on the different responses given by the two parties to question 8 annexed to the Panel's Procedural Order No.1. Question 8 reads as follows:

> "It is stated that 'the payment orders possessed by the Egyptian banks preliminarily demonstrate that the total amount of the Egyptian workers' money currently held by Iraq is US$491,098,538.00' (Statement of Claim, p. 17):
>
> a) When were the deposits amounting to the above stated sum made with the Iraqi banks? How much of that amount had been transferred to New York and when was this done? When would the above amount have been paid to the Egyptian beneficiaries if the transfers had not ceased? ...
>
> e) How much of the non transferred funds were deposited by the Egyptian workers after 2 August 1990?".

25. In its response, Egypt stated, in part, that

> "[o]f the $491,098,538.00 held by Iraq, approximately $414 million was handed in to the Iraqi banks prior to August 2, 1990. Approximately $77 million was handed in to the banks after August 2, 1990".

26. Iraq's response, to the question was that

> "[i]n summary the total operation of Rafidain and Rashid Banks with the Egyptian Banks is :- $118 102 263/67 payment orders after 2.8.90 subject to joint review by the Iraqi and Egyptian Banks."

Further, Iraq provided a breakdown, by date, of the value of the payment orders issued by the Rafidain and Rashid Banks relating to the funds deposited by Egyptian workers for transfer.

27. In addition to the responses of the parties to question 8, Egypt argues that the missing payment orders were not received by the Egyptian banks as there was a significant disruption of postal services or other communications within Iraq and between Iraq and Egypt subsequent to 2 August 1990. Further, Egypt states that the Cairo branch of the Rafidain Bank received payment orders after 2 July 1990 with a total value of less than half of the total value of payment orders received by the Bank of Alexandria and considerably less than the total value of payment orders received by the AAIB. This, Egypt points out, is contrary to the terms of the agreement between Egypt and Iraq whereby 20 per cent of the workers' remittances should have been sent to the AAIB, and 40 per cent each to the Cairo branch of the Rafidain Bank and the Bank of Alexandria.

28. Consequently, Egypt has requested the Panel to ask Iraq to explain the basis of its calculation of the sum of US$118,102,263.67. In addition, Egypt suggests that the Panel may wish to request Iraq to submit the actual payment orders upon which Iraq's calculation is based.

2. Iraq's Views

29. Iraq, on checking Egypt's submissions of payment orders and lists of claimants against its own records, implies that it is only liable for 184,038 claims for US$71,050,830, representing deposits made from 2 August 1990 to 5 April 1991. However, out of Egypt's submissions of payment orders for 224,602 claims with a total value of US$84,751,554, including deposits made between 2 July 1990 and 2 August 1990 and after 5 April 1991, Iraq raises issue with 31,708 claims for the sum of US$13,849,454.

30. In its views and comments on Egypt's submissions that followed the report of the Panel on the jurisdictional phase, Iraq stated that the lists of claimants filed by Egypt include: the names of 905 persons, claiming a total of US$382,453, for whom no payment orders have been filed and whose names do not exist in the records held by Iraq; the names of 181 persons who have submitted claims with a total value of US$102,015 each exceeding the amounts contained in their respective payment orders; and the names of 181 persons whose claims totalling US$138,873 are duplicated.

31. Further, Iraq asserted, on jurisdictional grounds, that it is not liable for 30,033 claims for US$13,029,405 representing deposits made between 2 July and 2 August 1990. Iraq also argued that it is not responsible for deposits made after 5 April 1991. This, Iraq contends, is because the Government of Iraq, on 6 April 1991, issued instructions to all banks in the country to stop all foreign exchange transfers and to not issue any payment orders from 5 April 1991. The instructions were not received by all of the branches of the banks involved in the transfer of the Egyptian workers' funds due to the breakdown of communication systems during the Gulf War. Consequently, according to Iraq, payment orders were issued for 408 deposits valued at US$196,708 after 5 April 1991.

B. Other Issues

32. The Panel has taken note of Egypt's request for the correction of alleged computational errors in the Panel's report on the jurisdictional phase. The request, in effect, suggests the adoption of a different method of calculating the expectation period for the transfer of the workers' funds, which would result in deposits made prior to 2 July 1990 being included in the Commission's jurisdiction.

33. The Panel also notes a request contained in Iraq's submissions that the claims of the workers be resubmitted to the Commission on separate, individual category "C" claim forms.

III. THE PANEL'S DETERMINATIONS

A. Value of the Claims in the Merits Phase

34. In its consideration of the Commission's jurisdiction over the workers' claims, the Panel concluded that only those claims relating to deposits made on or after 2 July 1990 were within the jurisdiction of the Commission. The main task before the Panel in the merits phase is, therefore, to determine the value of the claims relating to deposits made on or after 2 July 1990.

35. As stated above, Egypt, while only able to provide payment orders for deposits made from 2 July 1990 in the sum of US$84,751,554, insists that other payment orders were issued that were not received by the banks in Egypt and requests the Panel to make an inquiry to Iraq as to the existence of such payment orders.

36. The Panel is mindful of Iraq's statement in the jurisdictional phase that the value of payment orders issued after 2 August 1990 is US$118,102,262.67. The precision and detail in which the figure was provided would suggest that it was arrived at on the basis of documents available to Iraq. At the same time, the Panel notes that Iraq had stated that the amount provided was "subject to joint review by the Iraqi and

Egyptian Banks". In the merits phase, Iraq has not referred to the amount of US$118,102,262.67, but would appear to have limited its verification effort to the amount put forward by Egypt.

1. Basis for the Panel's Determinations

37. The Panel recalls that the burden of providing evidence in support of the workers' claims lies with Egypt. The general evidentiary standard applicable to category "C" claims is stated in decision 1 (S/AC.26/1991/1) of the Governing Council, and more specifically in article 35, paragraph 1 of the Rules (S/AC.26/1992/10), which provides that

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991)..."

Further, article 35, paragraph 2(c) of the Rules provides that category "C" claims "must be documented by appropriate evidence of the circumstance and amount of the claimed loss" and that "[d]ocuments and other evidence required will be the reasonable minimum that is appropriate under the particular circumstances of the case." In prescribing a lower standard of proof for smaller claims, it provides that "a lesser degree of documentary evidence ordinarily will be sufficient..."

38. Specifying what evidence would be required for a worker's claim to be found to be compensable, article 2 of the MOU provided, inter alia, that

> "Egypt will provide upon request, within the time-limit to be specified by the Panel of Commissioners, copies of 'payment orders' that would include the names of all of the claimants and the amount claimed for each claimant as well as any other available information and documents requested by the Panel of Commissioners."

39. In the Panel's view, the provision contained in article 2 of the MOU provides a good definition of the reasonable minimum evidence applicable under the circumstances of this case. The evidence required is equivalent to the reasonable minimum prescribed by the Rules and the Panel has not requested evidence from Egypt that is beyond the information contained in the payment orders. The Panel therefore concludes that the filing of the requested payment orders constitutes the reasonable minimum evidence required to substantiate the claims in this case.

40. The Panel recalls that the MOU that was signed on 17 June 1993 provides in its Article 2 that, before the merits phase, "Egypt will take such action to prepare the [payment orders and other documents and information] and will keep them in its custody for submission upon request." Egypt, therefore, was put on notice on 17 June 1993 to prepare the payment orders for filing with the Commission. Further, in October

1995, Egypt was allowed four months to file payment orders for deposits found by the Panel to be within the Commission's jurisdiction.

41. Although the difference in the amounts provided by Egypt and Iraq for deposits from 2 July 1990 was evident in their respective submissions of March 1995, it was not until 27 November 1995, after the Oral Hearing had been conducted by the Panel and after the Panel's report on the jurisdictional phase had been issued and transmitted to Egypt and Iraq, that Egypt first raised the issue of requesting Iraq to explain the basis of its calculation of the figure of US$118,102,262.67. In addition, Egypt has not provided evidence, such as sample copies of the "yellow forms" that were issued to the workers upon the deposit of their funds for transfer or affidavits of depositors, in support of the contention that some payment orders issued by the Iraqi banks for deposits made by the workers after 2 July 1990 were not received by the banks in Egypt.

42. The Panel notes that the two requests of Egypt were transmitted to Iraq, together with other submissions of Egypt filed pursuant to the Panel's report, but that Iraq has provided no reply to the assertions of Egypt. It is, therefore, doubtful that a further request to Iraq would yield any further information that would assist the Panel in making its recommendations in the limited time available to the Panel.

43. In addition, the Panel is of the opinion that embarking on the type of investigation required to deal with Egypt's request would not be compatible with the nature of the work of the Commission. In particular, the Panel is unable, within the time period available for its work, to conduct inquiries of this nature that may or may not determine conclusively the existence, or not, of payment orders issued from 2 July 1990 that were not received by the Egyptian banks.

44. In addition to the reasons explained above, there are practical considerations as to why the Panel would not be able to recommend a claim for compensation without being aware of the identity of the claimant and the amount claimed. The identity and the amount claimed by each claimant is a self-evident preliminary requirement, as stated in the category "C" claim form as well as in article 14 of the Rules. If compensation were to be approved for an amount in excess of that for which payment orders have been provided by Egypt, effecting payment of the compensation to the claimants would require the names of the claimants and the respective amounts approved, which have not been provided by Egypt.

45. Further, the Panel notes that the consolidated claim filed by Egypt concerned deposits, the existence of which Egypt was aware of at the time of filing the claim. The figure of US$491,098,538 stated in the consolidated category "C" claim form and in the accompanying Statement of Claim filed by Egypt would have to be assumed to have been calculated on the basis of documents available to Egypt.

46. The Panel notes that Egypt was aware, as it pointed out in its submission of 27 November 1995, of the unusual nature, especially at this stage, of its request that Iraq be required to explain the basis of its calculation in answer to a question addressed by the Panel in the jurisdictional phase. Moreover, Egypt and Iraq were informed in the Panel's report on the jurisdictional phase that the Panel would make its recommendations in the merits phase based on the documents filed pursuant to the said report and the Panel has not been provided with any explanations as to why it should deviate from that decision.

47. The Panel is aware that the total amount of the workers' funds deposited on or after 2 July 1990 in Iraq may well exceed the amount for which Egypt has been able to provide payment orders. For the reasons stated above, however, the Panel is unable to consider recommending payment to any claimant for whom a payment order has not been filed by Egypt and whose identity and amount claimed are not specified. Egypt has filed payment orders with a total value of US$84,751,554, as well as a list of the claimants whose identities are contained in the payment orders. Therefore the figure of US$84,751,554, representing the total value of payment orders that Egypt has filed, will be used by the Panel as a starting point for the verification of the claims in the merits phase.

2. Verification of the Claims

48. The Panel notes that out of the amount of US$84,751,554 put forward by Egypt as the total value of funds deposited by the workers from 2 July 1990 in the Iraqi banks for transfer to Egypt, Iraq challenges the sum of US$13,849,454. Iraq does not put forward any arguments with regard to the rest of the amount, i.e., US$70,902,100, which is, therefore, taken by the Panel as accepted by Iraq. 3/ The Panel finds no need for further verification of these claims and recommends that compensation be awarded with respect to them.

49. From the remaining disputed amount of US$13,849,454, Iraq objects to the sum of US$13,029,405, being the total value of 30,033 deposits made between 2 July and 2 August 1990. Iraq seeks the exclusion of these claims

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3/ Iraq, in its submissions of November 1996, states that the value of the deposits made between 2 August 1990 and 5 April 1991 is US$71,050,830, (see paragraph 29 above). It is not explained how this amount was calculated. However, when the total value of the claims that Iraq argues should not be compensated is deducted from the amount put forward by Egypt, the resulting amount is US$70,902,100. This amount includes the sum of US$474,611, which is the difference between the total amounts put forward by Egypt (US$84,751,554) and Iraq (US$84,276,943), for deposits after 2 July 1990, for which Iraq has not put forward any arguments to explain this difference.

on the basis that Iraq is not liable for deposits made before 2 August 1990. The Panel is unable to consider this argument in the merits phase as it refers to the question of the jurisdiction of the Commission over claims that have already been decided upon by the Panel in the jurisdictional phase. The Panel, therefore, recommends that compensation be paid with respect to those claims as well.

50. From the remaining disputed amount of US$820,049, Iraq argues for the exclusion of US$196,708, being the total value of 408 claims for deposits made after 5 April 1991. According to Iraq, the Iraqi banks were instructed by a Government directive to suspend all foreign exchange transactions and not to issue payment orders after 5 April 1991. However, due to a breakdown in communications as a result of the Gulf War, some of the bank branches received the instructions late. The Panel notes that the banks in Iraq, for reasons unrelated to the depositors, continued receiving funds from the workers for transfer and issued payment orders after 5 April 1991. Without discussing the nature of the directive and its effects on the bilateral agreements between Iraq and Egypt concerning the transfer of deposits by the workers, the Panel finds that, in any event, there is no basis for not providing compensation for deposits that were accepted by Iraqi banks before receiving the directive. The Panel, accordingly, recommends that compensation be paid with respect to these claims as well.

51. From the remaining disputed amount of US$623,341, Iraq objects to US$382,453, being the total value of 905 claims, on the ground that no payment order was issued for any of those claims in the period from 2 July 1990 and that they do not exist in the records held by Iraq. At the Panel's request, the secretariat has conducted an investigation of Iraq's assertion on this issue. The names of the 905 claimants in question were identified in the computerized lists of claimants filed by Egypt and a search for the relevant payment orders was made among the payment orders that were filed by Egypt. The result was that, of the 905 claims, no payment orders were found for 785 of the names with a corresponding total value of US$314,256. Thus, of the 905 claims for US$382,453 at issue, the Panel recommends compensation for 120 claims for US$68,197 for which payment orders have been filed by Egypt. The Panel further recommends that no compensation be awarded for 785 claims for US$314,256 for which no payment orders have been found.

52. From the remaining disputed amount of US$240,888, Iraq argues for the exclusion of an unspecified part of the sum of US$102,015, representing the partial value of 181 claims that Iraq alleges are in excess of the amounts covered by their respective payment orders. At the request of the Panel, the secretariat has compared the amounts to be transferred for these claims as stated by Iraq against the corresponding payment orders filed by Egypt. Based on this comparison, the Panel was able to establish that the number of such claims at issue is actually 175 rather than 181, as six of the claims were repeated in the lists filed by Iraq. The secretariat's review

also showed that the computerized lists of claimants provided by Egypt do not correspond to the payment orders with respect to US$43,306 in amounts stated for 142 claimants. Thus, the Panel recommends that compensation in the amount of US$58,709 be awarded for the 175 claimants in this grouping which corresponds to the total of the amounts as listed in the respective payment orders. The Panel does not recommend compensation for the amounts totaling US$43,306, found to be in excess of the figures stated on the payment orders.

53. Iraq also argues for the exclusion of US$138,873, the balance of the disputed sum, which represents 181 claims that Iraq alleges were duplicated. At the request of the Panel, Iraq's lists were checked by the secretariat against Egypt's lists of claimants and the relevant payment orders. The secretariat's analysis of the claims established that although the names of the 181 claimants in question appear more than once on the lists, none of these claims are duplicates as the entries relate to separate transfers, usually on different dates and for varying monetary amounts. Thus, the Panel recommends compensation for these 181 claims in the amount of US$138,873.

54. In view of the foregoing, the Panel finds that the total value of the claims in the merits phase is US$84,393,992, representing the total value of deposits in the Iraqi banks from 2 July 1990 for which payment orders have been filed, which are not in excess of the amounts stated on such payment orders and which have not been duplicated.

B. Other Issues

55. The Panel is aware that Egypt made a request for the correction of alleged computational errors in paragraphs 204 and 205 of the Panel's report on the jurisdictional phase, concerning "the calculation of the median or average period between the date the Egyptian workers made their dinar deposits in Iraq and the date the dollar covers for the dinars were expected to be made available in Egypt". According to Egypt, the expectation period should be recalculated as there is no basis for the calculation of a one-month period.

56. The Panel notes, however, that rather than being a request for the correction of computational errors as set out in article 41 of the Rules, Egypt's request raises questions that go to the basis of the findings in the Panel's determinations. The Panel confirms that its report on the jurisdictional phase accurately reflects its recommendations and that the Panel has not identified any computational errors in the said report that need correction.

57. The Panel is also aware of Iraq's request that the workers' claims be resubmitted on individual category "C" claim forms for each claimant, and that Iraq also questioned the validity of the MOU. The Panel finds that

these are issues that had been raised on earlier occasions and of which the Panel was aware in making its recommendations in the jurisdictional phase.

C. Interest

58. Egypt seeks interest on the amount of its claim "at the rate of 5% per annum, as required by the civil law of Egypt."

59. The relevant Governing Council decision concerning the question of interest is decision 16, "Awards of Interest" (S/AC.26/1992/16). According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In Decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards" and that "[t]he methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time". Thus, in principle, interest is payable on amounts recommended at a rate to be determined by the Governing Council at a later date.

60. As to the date from which interest will be calculated, neither the agreement between the individual depositor and the Iraqi bank, nor the bilateral agreements between Egypt and Iraq, provide for interest to be paid on the workers' funds while awaiting transfer. Accordingly, the Panel must determine "the date the loss occurred" within the meaning of Governing Council Decision 16, which is the date interest would start to accrue.

61. In the jurisdictional phase the Panel determined that the dollar value of the Iraqi dinars deposited in Iraqi banks for transfer were, on average, received in the corresponding bank in Egypt one month after deposit. Accordingly, "the date the loss occurred" coincides with the period during which the relevant deposits would have been expected to be transferred, this period extending approximately from 2 July 1990 to 30 July 1991.

62. Given that the deposits, consisting of numerous individual payments, were made over a period of time between July 1990 and July 1991 and that the bulk of the deposits were made between July 1990 and January 1991, the Panel fixes 15 October 1990 as the date from which interest on the total sum awarded will be calculated.

IV. RECOMMENDATIONS

63. Pursuant to article 37(e) of the Rules, and having considered the submissions made by Egypt and Iraq, the Panel recommends that:

a. Compensation in the amount of US$84,393,992 be awarded for 223,817 claims of Egyptian workers.

b. All other claims of the Egyptian workers be dismissed.

c. Interest be paid on the total amount awarded under subparagraph (a) above, calculated from 15 October 1990, at a rate to be determined by the Governing Council at the appropriate time.

64. The individual claimants and the amounts of compensation are those corresponding to the listing provided by Egypt in its submissions pursuant to the Panel's report on the jurisdictional phase, with the exception of those claimants whose names are contained in a confidential list to be transmitted to Egypt and Iraq with a copy of this report.

65. The Panel's findings and recommendations are made on the basis of the specific and unique circumstances of these claims, including the fact that there is no dispute between Egypt and Iraq as to the deposits made by the workers. The Panel's findings are thus without prejudice to the conclusions of other panels of Commissioners.

66. The Panel adopted this report, including the recommendations to the Governing Council, by unanimity.

Geneva, 9 July 1997

(Signed) Karl-Heinz Böckstiegel
Chairman

(Signed) Lazhar Bouony
Commissioner

(Signed) Enrique P. Syquia
Commissioner